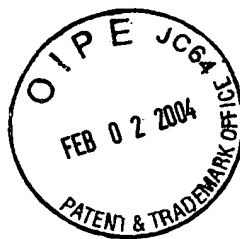


Serial No.: 09/542,205
Inventor(s): De Mott et al.



U.S. PTO Customer No. 25280
Case No.: 2172

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: De Mott et al.
Serial Number: 09/542,205
Filed: April 4, 2000
For: **PILE FABRIC HAVING CONDITIONED ENDS**
Group Art Unit: 1771
Examiner: Juska, C. A.

Mail Stop Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Certificate of Express Mailing Under 37 CFR §1.10 I hereby certify that this correspondence, and all correspondence referenced herein is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" with a Mailing Label Number listed below in an envelope addressed to "Mail Stop Appeal Brief-Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450" with sufficient postage on the date listed below: Express Mail Label No.: <u>EL 992172817 US</u> Date: <u>February 2, 2004</u> Name: <u>Steph Coak</u> Signature: <u>[Signature]</u>
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APPEAL BRIEF

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The present invention is generally directed to a fabric 100/200 having a face side with pile fibers 110/210. (See *Specification page 3, lines 10-11, lines 29-30, and FIGS. 2 and 3*). The pile fibers 110/210 of the fabric 100/200 extend from a substrate 120/220. (See *Specification page 3, line 12, page 4, line 1, and FIGS. 2 and 3*). The pile fibers 110/210 are free end fibers that include a base section 130/230 and an end section 140/240. (See *Specification page 3, lines 14-16, page 4, lines 3-5, and FIGS. 2 and 3*). The base section 130/230 has a proximal end 131/231 disposed approximate to the substrate 120/220, and the end section 140/240 has a distal end 141/241 disposed opposite from the proximal end 131/231. (See *Specification page 3, lines 16-18, page 4, lines 7-8, and FIGS. 2 and 3*).

The end section 140/240/440 includes disturbances 150/250/450 of flaking 151/251/451 and/or pitting 152/252/452 around a majority of the outer circumference of the pile 110/210/410/510. (See *Specification page 3, lines 18-20, page 4, lines 7-11, page 6, lines 17-23, and FIGS. 2, 3 and 6*). It is preferred that the disturbances 150/250/450/550 be substantially or entirely around the circumference of the pile fiber 110/210/410/510. (See *Specification page 3, lines 20-23, page 4, lines 11-14, page 6, lines 17-23, and FIGS. 2, 3 and 6*). The disturbances 150/250/450/550 of the end section 140/240 extend down the pile fiber 110/210 a distance of at least about 2%, and no more than about 90%. (See *Specification page 3, lines 23-25 and page 4, lines 14-15*). In one embodiment, it is preferred that the disturbances 150/250 extend down the pile 110/210 fiber at least about 5%, and no more than about 50%. (See *Specification page 3, lines 25-26 and page 4, lines 15-17*).

The end 141/241/451 of the pile fiber 110/210/410/510 has had the enlarged head removed, and fibrils 160/260/460 extend from the end 141/241/451 of the pile fiber 110/210/410 and from the side walls of the pile fiber 110/210/410 in the end section 140/240/440. (See *Specification page 3, lines 27-28, page 4, lines 17-20, page 6, lines 17-23, and FIGS. 2, 3 and 6*). Although some fibrils 460/560 are located on the side walls of the piles 410/510, a majority of the fibrils 460/560 are located extending from the ends 441/541 of the piles 410/510. (See *Specification page 7, lines 6-9, and lines 17-19, and FIGS. 6, 8, and 10*).

VI. Issues

- A. Whether or not Claims 3, 4, and 5 are patentable over Huth et al. (EP 784 114).**
- B. Whether or not Claims 1, 2, and 5 are patentable over Huth et al. (EP 784 114).**

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Claim 5 was rejected in the Final Office Action with Claims 1 and 2, where only Obviousness was an issue. However, Claim 5 depends from Independent Claim 4. Therefore, for the purpose of reducing issues, Applicants have presented this Appeal Brief with Claim 5 belonging to the Group of claims containing the Independent Claim 4. Applicants respectfully submit that the claims stand or fall as the groups presented in this appeal.

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The Final Office Action contained a rejection of Claims 3 and 4 under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over EP 784 114, issued to Huth et al. The Final Office action also contained a rejection of Claims 1, 2, and 5 under 35 USC 103(a) as being obvious over EP 784 114, issued to Huth et al. Also, as previously stated, for simplicity of the issues the rejection of claims has been regrouped in this Appeal Brief to the patentability of Claims 3, 4, and 5, and the patentability of Claims 1 and 2. Each one of the issues will be discuss individually below.

A. Claims 3, 4, and 5 are patentable over Huth.

Claims 3 and 4 were rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over Huth. Claim 5 was rejected under 35 USC 103(a) as being obvious over Huth. Claims 3 and 4 of the present invention are directed to an article of manufacture, a fabric. Claims 3 and 4 require specific physical elements of the article of manufacture, such as "free end pile fibers", and "disturbances around a majority of the circumference of the free end pile fiber" or "at least one fibril" extending from the side wall and end of the free end pile fibers. Applicants respectfully submit that there is no description in Huth of an article of manufacture having the characteristics of the present invention. However, the article of article of manufacture in the present invention was rejected on the basis of the method disclosed in Huth. Applicants respectfully submit that the burden of proof has been impermissibly shifted to Applicants under *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980) and *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and that a prima facie case of anticipation and/or obviousness has not been established.

1. The Burden Of Proof Has Been Impermissibly Shifted To Applicants

Applicants respectfully submit that the burden of proof has been impermissibly shifted to Applicants under *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980) and *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977). The burden of proof was shifted to the applicant in *In re Fitzgerald* and *In re Best* because the prior art was "identical or only slightly different from product claimed in product-by-process claim". It was asserted in the Office Actions that the process in Huth is so substantially similar to the process described in the specification of the present application to obtain the

claimed product, that a shift of the burden under 35 USC 102(b) and 35 USC 103(a) is justified according to *In re Fitzgerald* and *In re Best*. Applicant respectfully disagrees.

First of all, the invention in Claims 3, 4, and 5 is not a "product by process claim". Also, there is no description in Huth about the particular characteristics of any fiber in the pile. In the present case, the fabric article of Claims 3 and 4 have been rejected by a comparison of the method disclosed for forming the claimed invention in the description, with a method in published Huth. Huth describes an "emerizing machine with an emerizing cylinder which has attached to it parallel to its axis of rotation closely spaced strip-shaped emerizing elements." *See translation in Appendix B, first page, first sentence.* Huth states that the "cylinder serves to process a pile fabric with said emerizing element by passing it under tension and in wiping contact past its surface." *See translation in Appendix B, first page, second sentence (starting on third line).* There is no teaching in Huth of the type of pile to treat (e.g., loop or free end), the type or size of abrasive matter, the material the pile is formed of, amount or speed of the abrasion, etc. Because of this lack of specificity of the process in Huth, it is not reasonable to conclude that the process in Huth is "identical or only slightly different" to the process disclosed to make the claimed invention.

For example, the prior art equipment could have been used with large abrasive particles on loop piles of spun staple fiber yarns at a speed that merely brakes the individual staple fibers loose from the yarns of the loop piles without influencing the character of the individual staple fibers. In such a scenario, there would be no free end pile fibers with the specific characteristics as listed in Claim 3 or 4. This example would be dramatically different from the invention in Claim 3 and 4, and is no less speculative than the assumption that the application of the device in Huth would result in the claimed invention.

Therefore, Applicants respectfully submit there is an insufficient basis to assert that the cited prior art method is "identical or only slightly different" from the method for forming the claimed product, and that there is insufficient basis under *In re Fitzgerald* and *In re Best* to shift the burden to the Applicants.

2. The Invention In Claims 3 And 4 Is Novel Over Huth.

Applicant's respectfully submit that the cited prior art does not anticipate the invention in Claims 3 and 4. The examiner has presented no similarity between each of the elements in Claims 3 and 4, and elements of an article in Huth. The rejection is based on comparing the method disclosed in Huth with the method disclosed in the specification of the present invention. Thus, the rejection under 35 USC 102(b) is not a rejection of a claimed article with a reference describing a prior art article, but the rejection of a claimed article with a reference describing a process. Therefore, the rejection cannot stand unless the claimed article inherently (i.e., necessarily) results from the process described in Huth. As previously pointed out, many variables in the process have been omitted from Huth. As stated above, the process in Huth could not result in a pile fabric with loop piles of spun staple fiber yarns that merely has individual staple fibers loose from the yarns of the loop piles without influencing the character of

the individual staple fibers. In contrast, Claims 3 and 4 specifically require a free end pile fiber with specific abrasions or fibrils. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that that a certain thing may result from a given set of circumstance is not sufficient.'" *In re Robertson*, 169 F.3rd 743,745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted); see also MPEP 2112, Page 2100-51. Therefore, Applicants respectfully submit that the inventions in Claims 3 and 4 are not anticipated by the cited reference.

3. The Invention In Claims 3, 4, And 5 Is Not Obvious Over Huth.

Applicants respectfully submit that the invention in Claims 3, 4, and 5 is not obvious over Huth. Once again, this is not rejection of claimed article with a prior art article, but the use of a prior art process to reject a claimed article. As previously pointed out, Huth is so lacking in details on the fabric or the process applied to the fabric, that vastly different products could result from the application of the machine in that reference to a "pile" fabric. Huth gives no reason for the application of the abrasive bristles to a pile fabric, or how to obtain particular characteristics of the pile fabric by applying the prior art machine. Nor does Huth teach or suggest a fabric with the characteristics as the invention according to Claim 3, 4, or 5. For example, the prior art reference does not indicate if the pile is a free end pile fiber or a loop pile yarn, or if any abrasions or fibrils occur in a fiber. There is no teaching, suggestion, or motive to modify the application of the machine in the cited prior art to obtain the particular properties of the invention in Claim 3, 4, or 5. The only way to add the needed information for Huth to form the present invention, is by the use of the present invention as a blueprint for the motivation and missing information. It is impermissible to us hindsight to arrive at the claimed invention. *In re Zurko*, 111 F.3rd 887; 42 USPQ2d 1476 (Fed. Cir. 1997). Therefore, Applicants respectfully submit that Claims 3, 4, and 5 are not obvious in view of Huth.

B. Claims 1 And 2 Are Patentable Over Huth

Claims 1, 2, and 5 were rejected under 35 USC 103(a) as being obvious over Huth. Claims 1, 2, and 5 of the present invention are directed to an article of manufacture, a fabric. Claims 1 and 2 require pile fibers having a free length between proximal end and a distal end, and abrasions on the fibers extending in a direction from the distal end to the proximal end. Applicants respectfully submit that there is no description in Huth of an article of manufacture having the characteristics of the present invention. However, the article of article of manufacture in the present invention was rejected on the basis of the method disclosed in Huth. Applicants respectfully submit that the burden of proof has been impermissibly shifted to Applicants under *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980) and *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and that a prima facie case of anticipation and/or obviousness has not been established.

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As previously stated, the invention in Claims 3 and 4 is not a "product by process claim". Also, there is no description in Huth about the particular characteristics of any fiber in the pile. The rejection of Claims 1 and 2 is based upon a comparison of the method disclosed in the description for forming the claimed invention with a method in published Huth. Furthermore, as previously stated above, the method disclosed in Huth is so lacking in detail that it is not reasonable to conclude that the process in Huth is "identical or only slightly different" to the process disclosed to make the claimed invention.

In the example provided above, the resulting fibers would not have any abrasion, let alone abrasions in a specific direction such as from a distal end towards a proximate end. As another example, the pile density of the fabric, density of the abrasive bristles, and relative speeds of the fabric and bristles in Huth could be selected such that the bristles pass between the piles to abrade the piles in a direction perpendicular to the pile length. In contrast, Claims 1 and 2 specifically requires abrasions along the length direction (distal end to proximal end). This example would be dramatically different from the invention in Claim 3 and 4, and is no less speculative than the assumption that the application of the device in Huth would result in the claimed invention. Therefore, Applicants respectfully submit there is an insufficient basis to assert that the cited prior art is "identical or only slightly different" from the claimed product, that there is insufficient basis under *In re Fitzgerald* and *In re Best* to shift the burden to the Applicants.

2. The Claimed Invention Is Not Obvious Over Huth.

Applicants respectfully submit that the invention in Claims 1 and 2 is not obvious over Huth. Once again, this is not rejection of claimed article with a prior art article, but the use of a prior art process to reject a claimed article. As previously pointed out, Huth is so lacking in details on the fabric or the process applied to the fabric, that vastly different products could result from the application of the machine in that reference to a "pile" fabric. Huth gives no reason for the application of the abrasive bristles to a pile fabric, or how to obtain particular characteristics of the pile fabric by applying the prior art machine. Nor does Huth teach or suggest a fabric with the characteristics as the invention according to Claim 1 or 2. For example, the prior art reference does not

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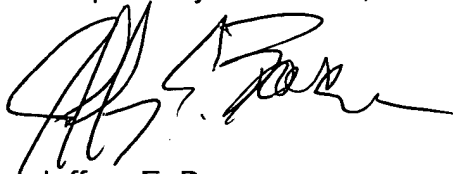
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indicate if the pile has free end fibers, or if any abrasions occur in a fiber, or if abrasions occur in a specific direction, as in the claimed invention. There is no teaching, suggestion, or motive to modify the application of the machine in the cited prior art to obtain the particular properties of the invention in Claim 1 or 2. The only way to add the needed information for Huth to form the present invention, is by the use of the present invention as a blueprint for the motivation and missing information. It is impermissible to us hindsight to arrive at the claimed invention. *In re Zurko*, 111 F.3d 887; 42 USPQ2d 1476 (Fed. Cir. 1997). Therefore, Applicants respectfully submit that Claims 1 and 2 are not obvious in view of Huth.

IX. Conclusion

For the above reasons, Appellant respectfully request the Appeal Board to reverse the decision of the examiner. In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from our Deposit Account No. 04-0500. Also, in the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicant hereby petitions for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from our Deposit Account No. 04-0500.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Jeffery E. Bacon', with a stylized flourish at the end.

Jeffery E. Bacon
Reg. No. 35,055

MILLIKEN & COMPANY
920 Milliken Road, M-495
Spartanburg, SC 29303
(864) 503-1160

APPENDIX A

1. A fabric having a face side comprising pile fibers having a free length between a proximal end and a distal end, at least a portion of said pile
5 fibers having surface abrasions extending from said distal end towards said proximal end, wherein said surface abrasion are disposed from about 2% to about 90% of said free length of said pile fibers.

2. A fabric having a face side comprising pile fibers having a free
10 length between a proximal end and a distal end, at least a portion of said pile fibers having surface abrasions extending from said distal end towards said proximal end, wherein said surface abrasions are disposed from about 5% to about 50% of said free length of said pile fibers.

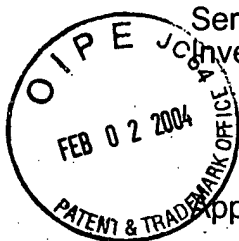
15 3. A fabric having a plurality of free end pile fibers with a base section and an end section, the end section having disturbances around a majority of the circumference of the free end pile fiber.

4. A fabric having a plurality of free end pile fibers with a side wall
20 and an end, further comprising the at least one fibril extending from said side wall and at least one fibril extending from said end.

5. The fabric according claim 4, further including a chemical
lubricant disposed on the pile fibers.

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6. (Cancelled)



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February 2, 2004

Name:

Stacy Cook

Signature:

Stacy Cook

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claimed product, that a shift of the burden under 35 USC 102(b) and 35 USC 103(a) is justified according to *In re Fitzgerald* and *In re Best*. Applicant respectfully disagrees.

First of all, the invention in Claims 3, 4, and 5 is not a "product by process claim". Also, there is no description in Huth about the particular characteristics of any fiber in the pile. In the present case, the fabric article of Claims 3 and 4 have been rejected by a comparison of the method disclosed for forming the claimed invention in the description, with a method in published Huth. Huth describes an "emerizing machine with an emerizing cylinder which has attached to it parallel to its axis of rotation closely spaced strip-shaped emerizing elements." *See translation in Appendix B, first page, first sentence.* Huth states that the "cylinder serves to process a pile fabric with said emerizing element by passing it under tension and in wiping contact past its surface." *See translation in Appendix B, first page, second sentence (starting on third line).* There is no teaching in Huth of the type of pile to treat (e.g., loop or free end), the type or size of abrasive matter, the material the pile is formed of, amount or speed of the abrasion, etc. Because of this lack of specificity of the process in Huth, it is not reasonable to conclude that the process in Huth is "identical or only slightly different" to the process disclosed to make the claimed invention.

For example, the prior art equipment could have been used with large abrasive particles on loop piles of spun staple fiber yarns at a speed that merely brakes the individual staple fibers loose from the yarns of the loop piles without influencing the character of the individual staple fibers. In such a scenario, there would be no free end pile fibers with the specific characteristics as listed in Claim 3 or 4. This example would be dramatically different from the invention in Claim 3 and 4, and is no less speculative than the assumption that the application of the device in Huth would result in the claimed invention.

Therefore, Applicants respectfully submit there is an insufficient basis to assert that the cited prior art method is "identical or only slightly different" from the method for forming the claimed product, and that there is insufficient basis under *In re Fitzgerald* and *In re Best* to shift the burden to the Applicants.

2. The Invention In Claims 3 And 4 Is Novel Over Huth.

Applicant's respectfully submit that the cited prior art does not anticipate the invention in Claims 3 and 4. The examiner has presented no similarity between each of the elements in Claims 3 and 4, and elements of an article in Huth. The rejection is based on comparing the method disclosed in Huth with the method disclosed in the specification of the present invention. Thus, the rejection under 35 USC 102(b) is not a rejection of a claimed article with a reference describing a prior art article, but the rejection of a claimed article with a reference describing a process. Therefore, the rejection cannot stand unless the claimed article inherently (i.e., necessarily) results from the process described in Huth. As previously pointed out, many variables in the process have been omitted from Huth. As stated above, the process in Huth could not result in a pile fabric with loop piles of spun staple fiber yarns that merely has individual staple fibers loose from the yarns of the loop piles without influencing the character of

the individual staple fibers. In contrast, Claims 3 and 4 specifically require a free end pile fiber with specific abrasions or fibrils. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that that a certain thing may result from a given set of circumstance is not sufficient.'" *In re Robertson*, 169 F.3rd 743,745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted); see also MPEP 2112, Page 2100-51. Therefore, Applicants respectfully submit that the inventions in Claims 3 and 4 are not anticipated by the cited reference.

3. The Invention In Claims 3, 4, And 5 Is Not Obvious Over Huth.

Applicants respectfully submit that the invention in Claims 3, 4, and 5 is not obvious over Huth. Once again, this is not rejection of claimed article with a prior art article, but the use of a prior art process to reject a claimed article. As previously pointed out, Huth is so lacking in details on the fabric or the process applied to the fabric, that vastly different products could result from the application of the machine in that reference to a "pile" fabric. Huth gives no reason for the application of the abrasive bristles to a pile fabric, or how to obtain particular characteristics of the pile fabric by applying the prior art machine. Nor does Huth teach or suggest a fabric with the characteristics as the invention according to Claim 3, 4, or 5. For example, the prior art reference does not indicate if the pile is a free end pile fiber or a loop pile yarn, or if any abrasions or fibrils occur in a fiber. There is no teaching, suggestion, or motive to modify the application of the machine in the cited prior art to obtain the particular properties of the invention in Claim 3, 4, or 5. The only way to add the needed information for Huth to form the present invention, is by the use of the present invention as a blueprint for the motivation and missing information. It is impermissible to us hindsight to arrive at the claimed invention. *In re Zurko*, 111 F.3rd 887; 42 USPQ2d 1476 (Fed. Cir. 1997). Therefore, Applicants respectfully submit that Claims 3, 4, and 5 are not obvious in view of Huth.

B. Claims 1 And 2 Are Patentable Over Huth

Claims 1, 2, and 5 were rejected under 35 USC 103(a) as being obvious over Huth. Claims 1, 2, and 5 of the present invention are directed to an article of manufacture, a fabric. Claims 1 and 2 require pile fibers having a free length between proximal end and a distal end, and abrasions on the fibers extending in a direction from the distal end to the proximal end. Applicants respectfully submit that there is no description in Huth of an article of manufacture having the characteristics of the present invention. However, the article of article of manufacture in the present invention was rejected on the basis of the method disclosed in Huth. Applicants respectfully submit that the burden of proof has been impermissibly shifted to Applicants under *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980) and *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and that a prima facie case of anticipation and/or obviousness has not been established.

1. The burden or proof has been impermissibly shifted to Applicants

Applicants respectfully submit that the burden of proof has been impermissibly shifted to Applicants under *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980) and *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977). The burden of proof was shifted to the applicant in *In re Fitzgerald* and *In re Best* because the prior art was "identical or only slightly different from product claimed in product-by-process claim". It was asserted in the Office Action that the process in Huth is so substantially similar to the process described in the specification of the present application to obtain the claimed product, that a shift of the burden under 35 USC 102(b) and 35 USC 103(a) is justified according to *In re Fitzgerald* and *In re Best*. Once again, Applicant respectfully disagrees.

As previously stated, the invention in Claims 3 and 4 is not a "product by process claim". Also, there is no description in Huth about the particular characteristics of any fiber in the pile. The rejection of Claims 1 and 2 is based upon a comparison of the method disclosed in the description for forming the claimed invention with a method in published Huth. Furthermore, as previously stated above, the method disclosed in Huth is so lacking in detail that it is not reasonable to conclude that the process in Huth is "identical or only slightly different" to the process disclosed to make the claimed invention.

In the example provided above, the resulting fibers would not have any abrasion, let alone abrasions in a specific direction such as from a distal end towards a proximate end. As another example, the pile density of the fabric, density of the abrasive bristles, and relative speeds of the fabric and bristles in Huth could be selected such that the bristles pass between the piles to abrade the piles in a direction perpendicular to the pile length. In contrast, Claims 1 and 2 specifically requires abrasions along the length direction (distal end to proximal end). This example would be dramatically different from the invention in Claim 3 and 4, and is no less speculative than the assumption that the application of the device in Huth would result in the claimed invention. Therefore, Applicants respectfully submit there is an insufficient basis to assert that the cited prior art is "identical or only slightly different" from the claimed product, that there is insufficient basis under *In re Fitzgerald* and *In re Best* to shift the burden to the Applicants.

2. The Claimed Invention Is Not Obvious Over Huth.

Applicants respectfully submit that the invention in Claims 1 and 2 is not obvious over Huth. Once again, this is not rejection of claimed article with a prior art article, but the use of a prior art process to reject a claimed article. As previously pointed out, Huth is so lacking in details on the fabric or the process applied to the fabric, that vastly different products could result from the application of the machine in that reference to a "pile" fabric. Huth gives no reason for the application of the abrasive bristles to a pile fabric, or how to obtain particular characteristics of the pile fabric by applying the prior art machine. Nor does Huth teach or suggest a fabric with the characteristics as the invention according to Claim 1 or 2. For example, the prior art reference does not

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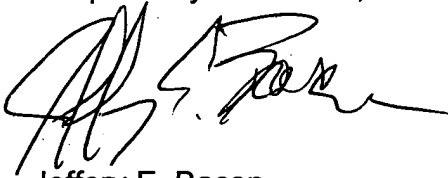
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indicate if the pile has free end fibers, or if any abrasions occur in a fiber, or if abrasions occur in a specific direction, as in the claimed invention. There is no teaching, suggestion, or motive to modify the application of the machine in the cited prior art to obtain the particular properties of the invention in Claim 1 or 2. The only way to add the needed information for Huth to form the present invention, is by the use of the present invention as a blueprint for the motivation and missing information. It is impermissible to us hindsight to arrive at the claimed invention. *In re Zurko*, 111 F.3d 887; 42 USPQ2d 1476 (Fed. Cir. 1997). Therefore, Applicants respectfully submit that Claims 1 and 2 are not obvious in view of Huth.

IX. Conclusion

For the above reasons, Appellant respectfully request the Appeal Board to reverse the decision of the examiner. In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from our Deposit Account No. 04-0500. Also, in the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicant hereby petitions for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from our Deposit Account No. 04-0500.

Respectfully Submitted,



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APPENDIX A

1. A fabric having a face side comprising pile fibers having a free length between a proximal end and a distal end, at least a portion of said pile
5 fibers having surface abrasions extending from said distal end towards said proximal end, wherein said surface abrasion are disposed from about 2% to about 90% of said free length of said pile fibers.
2. A fabric having a face side comprising pile fibers having a free
10 length between a proximal end and a distal end, at least a portion of said pile fibers having surface abrasions extending from said distal end towards said proximal end, wherein said surface abrasions are disposed from about 5% to about 50% of said free length of said pile fibers.
- 15 3. A fabric having a plurality of free end pile fibers with a base section and an end section, the end section having disturbances around a majority of the circumference of the free end pile fiber.
4. A fabric having a plurality of free end pile fibers with a side wall
20 and an end, further comprising the at least one fibril extending from said side wall and at least one fibril extending from said end.
5. The fabric according claim 4, further including a chemical lubricant disposed on the pile fibers.
- 25 6. (Cancelled)